

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

MICHAEL ASHBY,

Petitioner,

v.

ALICE PAYNE,

Respondent.

Case No. C03-5385RJB

ORDER REGARDING
COSTS OF APPEAL

This Habeas Corpus petition filed pursuant to 28 U.S.C. 2254 has been referred to the undersigned Magistrate Judge. Before the court is petitioner's motion and memorandum asking the court to order the Department of Corrections stop taking money from his account to pay for his appeal and reimburse him for the money taken to pay the cost of filing his appeal. (Dkt # 51).

Petitioner prevailed on his appeal to the Ninth circuit. His motion was filed August 24th, 2006. (Dkt. # 51).

On August 21st, 2006 costs of \$164.40 were entered in favor of Mr. Ashby. (Dkt. # 49). It appears the cost order and Mr. Ashby's motion have crossed in the mail.

Granting Mr. Ashby's motion appears to result in a situation where money is not taken out of

1 his account to pay for the filing fee and he then receives payment for a cost he has not incurred.

2 The respondent is directed to make whatever adjustment and/or payment is necessary to fully
3 reimburse petitioner for whatever portion of the \$164.40 in costs he has actually expended.

4 The clerk is directed to send copies of this order to petitioner and counsel for respondent.

5 DATED this 22nd, day of September, 2006.

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7 /S/ J. Kelley Arnold
8 J. Kelley Arnold
9 United States Magistrate Judge
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